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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,247	01/14/2004	Daniel P. Homiller	9314-61	4326
54414 7590 04/13/2010 MYERS BIGEL SIBLEY & SAJOVEC, P.A. P.O. BOX 37428 RALEIGH, NC 27627				
EXAMINER				
PHILIPPE, GIMS S				
ART UNIT		PAPER NUMBER		
2621				
MAIL DATE		DELIVERY MODE		
04/13/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/757,247

Applicant(s)

HOMILLER, DANIEL P.

Examiner

Gims S. Philippe

Art Unit

2621

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 December 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7, 9-46 and 48-67 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 19-30, 41-48 and 53-59 is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-13, 15-18, 31, 35-40, 49-52, 60, 64, 66 and 67 is/are rejected.
- 7) ☒ Claim(s) 4, 14, 32-34, 37, 61-63, 65 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-840)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. In view of the Appeal brief filed on December 29th, 2009, PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

- (1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
- (2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

/Mehrdad Dastouri/

Supervisory Patent Examiner, Art Unit 2621

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-3, 5-13, 15-18, 31, 35-40, 49-52, 60, and 64-67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chou (US Patent no. 6637031) in view of Gardner et al. (US Patent Application Publication no. 2004/0081198).

Regarding claims 1, 11 and 49, Chou discloses a multimedia distributing method (See Abstract). The method comprising transmitting multimedia data having a first resolution (See col. 3, lines 29-31); and separately transmitting supplemental data, which, when combined with the multimedia data having a first resolution, provides multimedia content at a second resolution that is higher than the first resolution (See col. 3, lines 29-44 and col. 4, lines 43-51).

It is noted that while Chou proposes real-time and non-real time transmission (See Chou col. 3, lines 29-46) it is silent about not performing in real-time or near real-time the separate transmission of supplemental data.

However, Gardner provides a multimedia distribution method including the step of not performing in real-time or near real-time the separate transmission of supplemental data (See Gardner paragraph [0032]).

Therefore, it is considered obvious that one skilled in the art at the time of the invention would recognize the advantage of modifying Chou's step of performing non-real time encoding by incorporating Gardner's step of not performing in real-time or near real-time the separate transmission of supplemental data. The motivation for performing such a modification in Chou is to allow the user to use the surplus channel bandwidth that is useful for sending supplemental data as taught by Gardner (See Gardner paragraph [0011]).

The applicant should note that the limitations of "streaming and downloading" as claimed in claim 11 is met in the above rejection as seen in the combination of Chou and Gardner (especially where the downloading of the second portion is taught in Gardner paragraph [0032]).

As per claims 31, most of the limitations of these claims have been noted in the above rejection of claims 1, 11, 41 and 49. In addition, Chou discloses a multimedia playing method (See Abstract). The method comprising streaming by a computer network a first portion of the multimedia work (See col. 3, lines 29-37 and col. 4, lines 49-66); downloading by a computer network a second portion of the multimedia work (See col. 4, lines 45-64); combining the multimedia data having a first resolution and the supplemental data to provide the multimedia content at a second resolution that is higher than the first resolution (See col. 3, lines 29-60); and playing the multimedia content at a second resolution that is higher than the first resolution (See col. 4, lines 40-66). The applicant should note that downloading is performed at col. 7, lines 9-31.

As per claim 60, Chu discloses a multimedia system comprising a receiver that is configured to receive multimedia data having a first resolution and to separately receive supplemental data, which, when combined with the multimedia data having a first resolution, provides multimedia content at a second resolution that is higher than the first resolution (See Abstract); a processor that is configured to combine the multimedia data having a first resolution and the supplemental data to provide the multimedia content at a second resolution that is higher than the first resolution (See Chu col. 3, lines 29-60); and a multimedia transducer that is configured to play the multimedia content at a second resolution that is higher than the first resolution (See Chu col. 12, lines 27-47).

As per claims 2-3, 12-13, and 50, most of the limitations of these claims have been noted in the above rejection of claims 1 and 11. In addition, Chu further discloses streaming the multimedia data having a first resolution, and wherein separately transmitting supplemental data comprises downloading supplemental data, which, when combined with the multimedia data having a first resolution, provides the multimedia content at a second resolution that is higher than the first resolution (See Chu col. 7, lines 8-47).

As per claim 5, Chu further discloses the supplemental data and multimedia content at the second resolution being a second size (See Chu col. 4, lines 40-51, and col. 11, lines 40-48).

As per claims 9 and 17, most of the limitations of these claims have been noted in the above rejection of claims 1 and 11.

It is noted that although the combination of Chou and Gardner further provides a method wherein transmitting multimedia data is performed in real or near real-time (See col. 3, lines 29-44), transmitting supplemental data is not performed in real or near real-time (See Gardner paragraph [0032]), it does not specifically disclose separately transmitting multimedia data from a first multimedia server; and wherein separately transmitting supplemental data from a second multimedia server that is different from the first multimedia server.

However, in col. 6, lines 10-20, Chou proposes using a remote server in the networked environment. Such remote server may be used to provide the feature of separately transmitting multimedia data from a first multimedia server; and wherein separately transmitting supplemental data from a second multimedia server. Therefore, it is considered obvious that one skilled in the art at the time of the invention would recognize the advantage of modifying the combination of Chou and Gardner to provide the additional server transmitting supplemental data as an alternate design choice as suggested by Chou.

As per claims 10, 18, and 40, most of the limitations of these claims have been noted in the above rejection of claims 1, 11 and 31.

It should be noted that while the proposed combination of Chou and Gardner does not particularly teach transmitting multimedia data is performed using a wireless network; and wherein separately transmitting supplemental data is performed using a wired network, such feature is considered as an alternate design choice since wireless and wired networks are well know and commonly used in multimedia transmission.

4. Claims 6, 7, 13, 15, 35-36, 38, 39, 51, 52, 64, 66 and 67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chou (US Patent no. 6637031) in view of Gardner et al. (US Patent Application Publication no. 2004/0081198) as applied to claims 1, 11, 31, 49 and 60 above, and further in view of Chaddha (US Patent no. 6,266,817).

As per claims 6, 7, 15, 38, 39, 51, 52, 66 and 67, most of the limitations of these claims have been noted in the above rejection of claims 1, 11, 31, 49, and 60.

It is noted that the proposed combination of Chou and Gardner is silent about a method wherein transmitting multimedia data is subject to a first digital rights management scheme as specified in claims 6, 7, 15, 38, 39, 51, 52, 66 and 67.

However, Chaddha teaches a method wherein transmitting multimedia data is subject to a first digital rights management scheme; wherein separately transmitting supplemental data is subject to a second digital rights management scheme that is

different from the first digital rights management scheme; and wherein separately transmitting supplemental data is preceded by receiving payment for the supplemental data that is greater than payment that is received for the multimedia data having a first resolution (See Chaddha col. 12, lines 5-18, lines 59-67 and col. 13, lines 1-4).

Therefore, it is considered obvious that one skilled in the art at the time of the invention would recognize the advantage of modifying the transmission method of Chou and Gardner by incorporating Chaddha's teachings where a digital rights management is implemented. The motivation for performing such a modification in the proposed combination of Chu and Gardner is to enable the user to request supplemental data for a price that he/she will be willing to pay first before receiving additional data (See col. 12, lines 63-65).

NOTE: The play specific media content is part of what the user willing to pay for a specific media content. In other words, while the terminology may different, the purpose is similar.

As per claims 13, 35-36, and 64, most of the limitations of these claims have been noted in the above rejection of claims 11, 31 and 60.

It is noted that the proposed combination of Chou and Gardner is silent about the steps of receiving, separately receiving, combining and playing by a single user and the steps of receiving multimedia data and separately receiving supplemental data are at

least partially separated in receiving time, originating space, receiving channel and/or medium.

However, Chaddha in col. 12, lines 21-23 and col. 3, lines 46-48 teaches similar limitations in addition to steps where a user can determine whether or not he/she needs data. Therefore, it is considered obvious that one skilled in the art at the time of the invention would recognize the advantage of using Chaddha's teachings to modify the combination of Chou and Gardner in order to provide a market-based mechanism by partially receiving data in separated time.

6. Claims 4, 14, 32-34, and 65 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. Claims 19-30, 41-48, 53-59 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gims S. Philippe whose telephone number is (571) 272-7336. The examiner can normally be reached on M-F (10:30-7:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mehrdad Dastouri can be reached on (571) 272-7418. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Gims S Philippe
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